

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 130 OF 1998

Deelip Jagannath Desai
R/o Pungus, Tal. Sangmeshwar,
Dist. Ratnagiri ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr.Rahul Kate, Advocate for the applicant.

Ms. R.M. Gadhvi, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 12TH MARCH, 2007.

ORAL JUDGMENT

. The applicant by this revision application, has challenged the judgment and order passed by the J.M.F.C., Deorukh in Summary Criminal case No. 645/1994, whereby the learned J.M.F.C. convicted the applicant for the offences punishable under section 451 and 354 of Indian Penal Code and sentenced him to undergo S.I. for one year and to pay fine of Rs. 200/- on each count. The applicant had challenged the conviction in Criminal Appeal No.3 of 1997, which came to be dismissed on 2nd May, 1998.

2. The prosecution case, in brief, is that the prosecutrix Reshma Ravindra Shinde- P.W. 3, is a married woman. Her husband and brother-in-law used to reside at Bombay for service purpose. Only the prosecutrix and her father-in-law used to live in the family house at village Fungus. Her father-in-law also used to come only for taking meals, otherwise he used to live at the place of his employer Anant Kulkarni. On 9/11/1994 the present applicant knocked the door of the house of the prosecutrix. She opened the door and found the accused present in front of the door. As accused was working as a teacher in the village, out of courtesy she offered water and also asked him whether he would like to take tea. The accused nodded and therefore, prosecutrix went to the kitchen, while accused was sitting in Padvī of the house. When she was in the kitchen, the accused followed her and initially made some oral gestures and then caught her from abdomen and chest from behind and tried to kiss her. Due to this, prosecutrix gave a jerk and rescued herself. She also abused him. The accused expressed sorry and went away from the house. The prosecutrix told this fact to one Sulochana immediately after the incident and thereafter lodged the report with police. Plea of accused was

recorded for the offences punishable under Section 451 and 354 of Indian Penal Code and he pleaded not guilty. According to him, he had initiated complain against illicit liquor in the village. However, some relatives of the prosecutrix were dealing in illicit liquor, due to this she lodged the false report against him. Secondly, he had advanced amount of Rs. 500/- to her father-in-law as a hand loan. That amount was not repaid. When he demanded, a quarrel had taken place.

3. On behalf of the prosecution in all 5 witnesses were examined. P.W.3 Reshma had narrated the incident to P.W. 4 Sunita and P.W.5 Sulochana after the incident. These two witnesses supported her. In view of the conduct of the prosecutrix in immediately reporting the matter to other ladies and then to police, provides corroboration to her. Relying on the testimony of these witnesses the learned Magistrate convicted the accused and sentenced him as stated above. In appeal the learned Sessions Judge, Ratnagiri minutely considered and analysed the evidence and concurred with the findings of the learned J.M.F.C. He dismissed the appeal. I have gone through the evidence led by prosecution and the judgments rendered by both the

Courts below. As far as conviction for the offence punishable under section 354 and 451 IPC are concerned, I do not find any illegality, irregularity or mistake. Therefore, the conviction has to be maintained.

4. However, it may be noted that the case was registered as summary case and record reveals that the Magistrate had tried this case as a Summary Case. He did not frame charge but proceeded to record the plea of the accused as required under section 263 Cr.P.C. Section 262 (2) Cr.P.C. clearly proves that no sentence or imprisonment for a term exceeding three months shall be passed in the case of any conviction under chapter XXI. The case was tried and the order of conviction was passed under Chapter XXI which deals with the summary trials. In view of specific provisions of section 262(2), the learned Magistrate could not have awarded sentence of imprisonment exceeding three months but he awarded imprisonment for a term of one year with fine on each count. Thus, he has clearly committed error, while awarding sentence of imprisonment. Unfortunately, this error was not noted even by the Sessions Judge. In view of this, it is clear that to the extent of sentence the impugned order is not correct and needs interference.

5. Revision Application is partly allowed. The conviction of the accused for the offences punishable under sections 354 and 451 of I.P.C. is maintained. However, he shall undergo simple imprisonment for three months and shall pay fine of Rs.200/- on each count and in default to pay fine, he shall undergo for the simple imprisonment for 20 days. The substantive sentence of imprisonment of both the counts shall run concurrently. As accused has already paid the fine amount, he shall surrender before the learned J.M.F.C. to undergo sentence of imprisonment.

(J.H. BHATIA, J.)